IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WEATHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of case

Appeal From Order No. 178 of 2003 **Decided on: 31st March, 2006**
(FAFO No. 752/1983)

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 31.03.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 178 of 2003
(Old No. 752 of 1983)

1. Smt. Chandra Devi, Widow of Kedar Singh
2. Smt. Saraswati Devi, W/o Lal Singh
3. Lal Singh S/o Kushal Singh
   All above residents of Village Annu,
   Patti Talla Waldiya, Tehsil Pithoragarh,
   District Pithoragarh.

…….. Appellants

Versus

1. Diwan Singh S/o not known
   owner of Bus No. U.P.D. / 188
   R/o Village Panuwa Naula,
   Tehsil Baramandal, Distt. Almora.
2. The National Insurance Co. Ltd.
   Badri Pura, Haldwanni, District Nainital.
3. Hari Ram S/o Lacchi Ram,
   Driver of Bus No. U.P.D. / 188,
   R/o Village Panthsera Piple,
   Tehsil Didihat, Distt. Pithoragarh.
4. Nitya Nand Agarwal,
   C/o Bharat Transport Co., Bhotia Parao,
   Haldwani, District Nainital.
5. The United India Assurance Co. Ltd.
   Haldwani, District Nainital.
6. Narayan Singh S/o Tej Singh,
   Driver Truck No. U.T.F. 4293,
   R/o Village Pokhari, Patti Malla Kamshyar,
   District Almora.
7. The Punjab and Sindh Band,
   Haldwani, District Nainital.
8. The Oriental Fire & General Insurance Co. Ltd.
   Hazrat Hanj, Lucknow.

…… Respondents

Mr. Rajendra Dobhal, Advocate for the appellants.
Mr. Prabhat Pande, Advocate for respondent No. 2.
Mr. K.K. Shah, Advocate for respondent No. 5.
Mr. Rajesh Joshi, Advocate holding brief of
Mr. T.A. Khan, Advocate for respondent No. 8.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 110-D of the Motor Vehicles Act, 1939, is directed against the judgment and award

dated 29.07.1983, passed by M.A.C.T. / District Judge, Pithoragarh in M.A.C. Case No. 14 of 1981, whereby a sum of Rs. 23,466/- has been awarded with interest at the rate of 6% per annum thereon as compensation to the claimants / appellants.

3) Brief facts of the case, are that a claim petition under Section 110-A of the Motor Vehicles Act, 1939 was moved by the claimants Chandra Devi, Saraswati Devi and Lal Singh, before the M.A.C.T. / District Judge, Pithoragarh. As per the contempt petition on 05.11.1980, Kedar Singh Negi (deceased) boarded the passenger bus registration No. U.P.D. / 188 at Tanakpur on his way to Pithoragarh. At about 11:30 A.M. a truck registration No. U.T.F. / 4293, owned by respondent No. 4 was coming from the opposite direction towards Tanakpur. It appears that when the aforesaid bus and the truck were crossing each other an accident took place. It is alleged that due to rash and negligent driving on the part of the driver of aforesaid truck, Kedar Singh Negi got head injuries and he succumbed to his injuries. It is further alleged that the deceased was 24 years of age at the time of accident and was employed in Hindustan Petroleum Corporation Ltd. in Bombay. His earning at the time of death was Rs. 1057.54 per month. Claimant Smt. Chandra Devi is widow of the deceased and claimants Saraswati devi and Lal Singh are the parents of the deceased. It was further alleged in the claim petition that deceased used to contribute Rs. 700/- per month to the claimants. With these allegations an amount of Rs. 2,31,100/- was claimed as compensation by the claimants / appellants.

4) The owner and driver of the bus in question, filed their written statements and contested the claim petition in which it was alleged that there was rash and negligent driving on the part of the driver of the truck and not on the part of the driver of the bus. The opposite party No. 4, the owner of the truck, also contested the claim petition by filing separate written statement in which it was alleged that his vehicle was in the extreme left of the hill road and the accident in question has not occurred due to the negligence on the part of the driver of the truck, Narain Singh. Opposite party No. 5, United India Insurance Co. Ltd., the insurer of the truck registration No. U.T.F. / 4293 has filed its separate written statement and contested the claim. However, the Company has admitted that the truck was insured with it and its liability was up to the limit of Rs. 50,000/-.

5) The Tribunal framed following issues, during the trial:

1. *Whether, truck registration No. U.T.F. / 4293 was stationery when the accident took place?*

2. *Whether, the accident took place due to the rash and negligent, driving on the part of the driver of the truck registration No. U.T.F. / 4293 or it occurred due to the driver of the bus registration No. U.P.D./188, or the both?*

3. *To what extent the negligence on the part of the deceased, if any, contributed to his death?*

4. *What was the age of the deceased at the time of his death and what was his monthly income?*

5. *What amount was the deceased contributing towards the maintenance of the applicants / claimants every month?*

6. *To what compensation, if any, the claimants are entitled and the extent to which each of the opposite parties, if any, is liable?*

6) After recording the evidence and hearing the parties, the tribunal came to the conclusion that the truck registration No. U.T.F. / 4293 was not stationary at the time of the accident and the accident has occurred due to the rash and negligent driving on the part of the driver of the truck registration No. U.T.F./4293. However, it was further found by the Tribunal that the deceased himself was also negligent in keeping his head out of the window of the bus. The Tribunal further found that the total loss of dependency including the consortium suffered by the claimants was Rs. 70,400/- as the deceased was aged 24 years who was earning about Rs. 1,000/- per month out of which he was contributing Rs. 700/- per month towards maintenance of his family. The Tribunal also concluded that the United India Insurance Co., with whom the truck was insured, is liable to make the payment, but reduced the amount of compensation on Rs. 23,446/- on account of the fact that the contributory negligence on the part of the deceased was 2/3 in the accident in question. Aggrieved by the same, the claimants / appellants have preferred this appeal for enhancement of the amount of compensation.

7) I heard learned counsel for the parties and perused the record summoned from the tribunal.

8) There is sufficient evidence on record and the findings as to the negligence on the part of the driver of the truck. The said findings are not challenged by any party. It is also established from the evidence on record that the deceased Kedar Singh Negi was travelling in the bus in question when the accident occurred. It is also proved that he was aged 24 years at the time of his death and his monthly income was around Rs. 1,000/- per month. There is no evidence controverting the evidence adduced on behalf of the claimants that the monthly contribution made on behalf of the deceased was Rs. 700/- per month. The enhancement has been sought on the ground that the deceased has wrongly been held to be negligent to the extent of 2/3. It is also alleged that the multiplier has also been wrongly applied. On going through the impugned judgment and award, this Court did not find any error of law in applying the multiplier as the multiplier of 16 has been applied as two of the claimants were parents and their age was also to be considered. As to the dependency of the widow, the multiplier has rightly been applied higher. However, this Court is in agreement with the submission of learned counsel for the appellants that there was no sufficient reason with the tribunal to hold 2/3 contributory negligence on the part of the deceased. Where there is no evidence to establish the contributory negligence more on the part of the particular party, it is just and proper to hold each party equally negligent. It is a matter of common knowledge that in the hills generally the roads are not wide enough. In the present case, from the evidence on record it appears that the width of the road on the particular place of the road where the accident in question occurred is 16 feet. The truck as well as the bus both were heavy vehicles and crossing each other. It is a fact they did not collide with each other. Since, the

deceased suffered head injury while sitting on bus, as such, it is not erroneous to say that he was not negligent in keeping his head out of the window at that stage. On the other hands, the driver of the truck was rightly found negligent in driving the truck as he was coming downwards from the side of Pithoragarh towards Tanakpur. It was his duty to slow down his vehicle and give pass to the bus, which was coming from Tanakpur towards Pithoragarh in upward direction. But these contribution in absence of otherwise evidence can be said to be equal on the part of the deceased and on the part of the driver of the truck. In the opinion of this Court, the contributory negligence cannot be arbitrarily fixed to the extent of 2/3 or 3/4, unless there is specific evidence to that effect.

9) In the above circumstances, in the opinion of this Court, there is equal contributory negligence on the part of the deceased and the truck driver. As such, the amount of compensation of Rs. 70,400/- should not have been reduced by 2/3. Instead, it should have been reduced by half i.e. amount of Rs. 35,200/-. That being so, the amount of compensation awarded to the claimants should have been Rs. 35,200/- instead of Rs. 23,466/-. Accordingly, the appeal deserves to be allowed partly, to the above extent.

10) The appeal is allowed partly and the amount awarded is enhanced from Rs. 23,466/- to Rs. 35,200/- which shall be paid by the United India Insurance Co., the respondent with whom the truck registration No. U.T.F. / 4293 was insured, at the time of the accident. Said respondent is further directed to pay interest at the rate of 6% per annum on the aforesaid sum if paid within a month from today. If the amount is not paid

as directed, within a month (adjusting the amount, if any, already paid), the respondent, United India Insurance Co. shall be liable to pay interest at the rate of 9% per annum on the outstanding awarded sum. With these directions the appeal is partly allowed. No orders as to costs.

(Prafulla C. Pant, J.)

Dt. March 31, 2006.
H. Negi